

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CSX CORPORATION,

Plaintiff,

-against-

08 Civ. 2764 (LAK)

THE CHILDREN'S INVESTMENT FUND  
MANAGEMENT (UK) LLP, et al.,

Defendants.  
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### ORDER

LEWIS A. KAPLAN, *District Judge*.

Plaintiff's memorandum in response to defendants' post-trial brief asserts at page 20 that TCI is precluded from relying on any advice of counsel defense by its assertion of privilege to foreclose discovery on the subject.

Plaintiff, on or before June 4, 2008 at 5 p.m., shall provide factual substantiation for this assertion, including the precise discovery requests in respect of which TCI asserted privilege. The parties may submit letters, no longer than 4 double spaced pages each and no later than June 6, 2008 at 5 p.m., as to whether any such assertion of privilege forecloses reliance by defendants upon advice of counsel to negate bad or establish good faith. *See, e.g., E.G.L. Gem Lab Ltd. v. Gem Quality Inst., Inc.*, 90 F. Supp.2d 277, 296 n.133 (S.D.N.Y. 2000), *aff'd*, 4 Fed. Appx. 81 (2d Cir. 2001) (citing *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir.), *cert. denied*, 502 U.S. 813 (1991)).

SO ORDERED.

Dated: June 2, 2008



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Lewis A. Kaplan  
United States District Judge

